

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)

Application 02-11-017
(Filed November 8, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 E)

Application 02-09-005
(Filed September 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT
TO CLAIM COMPENSATION**

1. Summary

This ruling responds to the notices of intent to claim compensation (NOIs) that were separately filed in this docket by William Adams (Adams), Aglet Consumer Alliance (Aglet), Agricultural Energy Consumers Association (AECA), Latino Issues Forum and the Greenlining Institute (jointly Greenlining), Natural Resources Defense Council (NRDC), San Francisco Community Power

Cooperative (SF Co-op), San Luis Obispo Mothers for Peace (SLOMFP), and The Utility Reform Network (TURN). This ruling addresses the requirements of the Pub. Util. Code, Article 5, § 1804. All statutory references are to the Public Utilities Code. After consultation with the assigned Commissioner, I find that Aglet, Greenlining, NRDC, SF Co-op, and TURN have met all relevant requirements including significant financial hardship and are eligible for compensation in this proceeding. I also find that Adams is a customer eligible for compensation subject to a later showing of significant financial hardship. I also preliminarily find that SLOMFP is a customer eligible for compensation subject to a later showing of significant financial hardship and additional documentation of its customer status. A subsequent ruling will address the NOI of AECA.

All parties who intend to seek intervenor compensation should ensure that each party's efforts complement or supplement but do not duplicate the efforts of other parties with similar interests. I note that there is some overlap in the areas of focus between intervenors based on their NOIs. Parties requesting compensation should discuss amongst themselves and the Commission staff the issues each will address to promote efficiency in their showings. Merely appearing, stating a position, and cross-examining will not assure compensation, rather, intervenors must demonstrate that their participation resulted in a substantial contribution to the proceeding by the unique presentation of facts or arguments that were relied upon by the Administrative Law Judge (ALJ) or Commission in resolving this proceeding.

2. Background

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve

on all parties to the proceeding a notice of intent to claim compensation.” The prehearing conference in this proceeding was held on January 28, 2003. All NOIs were timely filed.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b) and identify whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.) Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Section 1802(g) defines “significant financial hardship.”

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

3. William Adams

Adams meets the first definition of customer, as set forth in § 1802(b) because he is a Pacific Gas and Electric Company (PG&E) customer representing more than his own self-interest. Adams intends to coordinate his advocacy efforts with other parties to minimize duplication. Adams has elected to defer his showing of significant financial hardship until any request for compensation is made.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer’s planned participation in the proceeding to the extent this can be predicted. Adams expects to conduct discovery, prepare testimony, cross-examine witnesses, and file briefs and comments, as required. Adams plans to focus on electrical safety and reliability issues.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Adams estimated a total projected budget of \$19,800 for this case, based on proposed hourly rates which will be addressed in his Request for Compensation.

4. Aglet Consumer Alliance

Aglet is an unincorporated nonprofit association, registered with the State of California Secretary of State. Aglet is organized to represent and advocate the interests of residential and small commercial customers of electric, gas, water,

and telephone utilities in California. Aglet represents the specific interests of small customers.¹ Aglet expects that its participation will support and complement, but not duplicate the showings of Office of Ratepayer Advocates, TURN, and other parties. Aglet meets the third definition of customer, as defined in § 1802(b), thus, the comparison standard applies.

The economic interests of Aglet's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of Aglet's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. Aglet's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation.

A rebuttable presumption of eligibility exists for Aglet. A finding of significant financial hardship was determined in an ALJ Ruling issued on March 7, 2002 in R.01-05-047. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in R.01-05-047 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Aglet plans to participate actively by conducting discovery, preparing and serving testimony, testifying, cross-examining

¹ Aglet provided the relevant portions of its articles of incorporation in its notice of intent in A.99-03-014. At the present time, all of Aglet's members are residential utility customers, including customers of PG&E and Edison. Approximately 30% of Aglet's members also operate small businesses with separate energy or telephone utility service.

witnesses, and filing briefs and comments, as required. Aglet plans to focus on PG&E operating expenses and ratemaking practices.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Aglet estimated a total projected budget of \$80,340 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

5. Latino Issues Forum/Greenlining Institute

Both Latino Issues Forum and Greenlining Institute are 501(c)(3) organizations authorized by their bylaws to represent, among others, low-income communities and residential ratepayers before regulatory agencies and courts.² The interests that Greenlining represents, specifically low-income, minority and limited-English speaking communities, are frequently underrepresented in Commission proceedings. Greenlining meets the last definition of customer, as defined in § 1802(b), thus, the comparison standard applies.

The economic interests of Greenlining's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of Greenlining's participation in Commission proceedings substantially outweighs the benefits to an individual customer it represents.

² Greenlining provided the relevant portions of the articles of incorporation of both Latino Issues Forum and Greenlining Institute in its notice of intent in A.98-12-005. Latino Issues Forum estimates that about 85% of its members are residential ratepayers, with 15% being small business customers. Greenlining Institute estimates that about 75% of its members are residential ratepayers, with 25% being small business customers.

Greenlining's members are customers whose individual interests in this proceeding are small relative to the costs of participation.

Greenlining notes that D.00-04-003 found it met the requirements of significant financial hardship. Because that finding was made more than one year prior to this proceeding commencing, it does not establish a rebuttable presumption. However, we note that D.02-07-030 also found that Greenlining met the criteria for a finding of significant financial hardship. This proceeding commenced within one year of that finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Greenlining plans to participate by preparing and serving testimony, testifying, cross-examining witnesses, and filing briefs and comments, as required. Greenlining plans to focus its participation on PG&E's customer service programs, specifically, how they serve low-income, minority, and limited-English speaking customers, and the provision of safe and reliable service to these communities. Greenlining will also examine workforce diversity, executive compensation, and philanthropic contributions.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Greenlining estimated a total projected budget of \$129,250 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

6. Natural Resources Defense Council

NRDC is organized to represent and advocate its members' interests in regulatory proceedings affecting natural resources. NRDC qualifies as a

customer because it is an organization that is authorized by its articles of incorporation to represent the interests of ratepayers with a concern for the environment that distinguishes its interest from other intervenors.³ NRDC will coordinate its participation to avoid duplication. NRDC meets the third definition of customer, as set forth in § 1802(b), thus, the comparison standard applies.

The economic interests of NRDC's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of NRDC's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. NRDC's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation.

A rebuttable presumption of eligibility exists for NRDC. A finding of significant financial hardship was determined in an ALJ Ruling issued on May 28, 2002 in R.01-10-024. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in R.01-10-024 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. NRDC expects to prepare testimony, participate in

³ NRDC provided the relevant portions of its bylaws and articles of incorporation in its notice of intent. NRDC has approximately 30,000 dues paying members in PG&E's service territory, the majority of which are residential ratepayers.

hearings, and file briefs and comments, as required. NRDC plans to focus on minimizing the societal costs of reliable energy.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. NRDC estimated a total projected budget of \$31,500 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

7. San Francisco Community Power Cooperative

SF Co-op is a member-owned non-profit organized under the provisions of The California Consumer Cooperative Corporation Law, for the specific purpose of promoting social welfare by all appropriate means, including assisting San Francisco area communities, neighborhoods and individuals with demand side energy activities and education and community development. (Bylaws, Section 1.01(a)).⁴ It has a total of 644 members, 514 of whom are residents and 130 of whom are businesses. The majority of SF Co-op's residential members are low income, and 90% of its business members are small energy users with annual electricity bills of less than \$5,000. Only three of its business members are medium to large energy users, who spend in excess of \$50,000 per year on electricity. Given the predominantly residential customer composition of its membership and its overall purpose as an organization, the Commission may reasonably infer that SF Co-op is a group or organization authorized pursuant to its bylaws to represent the interests of residential customers, and as such, is a customer under § 1802 (b). SF Co-op indicates it will tailor its participation to

⁴ SF Co-op attached its bylaws and articles of incorporation to its notice of intent in R.02-06-001.

avoid duplication. SF Co-op meets the definition of customer, as defined in § 1802(b), thus, the comparison standard applies.

The economic interests of the majority of SF Co-op's individual members are small in comparison to the costs of effective participation in Commission proceedings because most of its members have annual utility bills of less than \$50,000. The fact that SF Co-op has some large energy users amongst its membership does not, per se, result in a finding that significant financial hardship does not exist. In addition, the cost of SF Co-op's participation in Commission proceedings substantially the benefits to most of the customers it represents.

A rebuttable presumption of eligibility exists for SF Co-op. A finding of significant financial hardship was determined in and ALJ Ruling issued on September 16, 2002 in R.02-06-001. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in R.02-06-001 is applicable. The presence of three business members whose annual electricity bills exceed \$50,000 does not vitiate a finding of eligibility for the broader organization, a majority of whose members are residential and small commercial. At the time the Commission addresses SF Co-op's compensation request, it will determine what percentage of the Co-op's total membership actually faces a significant financial hardship, and consistent with prior decisions presenting similar facts, it will reflect that determination in its calculation of any compensation award ultimately made. (see, e.g., D02-06-014 and D.98-02-099). A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the

extent this can be predicted. SF Co-op plans to participate actively by conducting discovery and analysis, presenting testimony, and submitting briefs. SF Co-op's focus will be on proposed revenue increases for the distribution system.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. SF Co-op estimated a total projected budget of \$42,500 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

8. San Luis Obispo Mothers for Peace

SLOMFP states it is organized to represent the interests of customers regarding safety consequences of rate mechanisms for California utilities.⁵ SLOMFP intends to ensure its participation supports and complements the work of other parties to avoid undue duplication. I preliminarily rule that SLOMFP is a customer under § 1802(b), subject to SLOMFP providing additional documentation when it ultimately filed its Request for Compensation. SLOMFP appears to meet the third definition of customer, as set forth in § 1802(b), thus, the comparison standard applies.

SLOMFP states that because it has previously received a finding of significant financial hardship, a rebuttable presumption applies. However, that finding occurred in 1997, more than one year prior to this proceeding

⁵ SLOMFP did not provide the relevant portions of its bylaws or articles of incorporation or direct us to the proceeding where they were most recently filed. SLOMFP states that it is a non-profit advocacy organization representing residential and small commercial customers.

commencing, thus, no rebuttable presumption applies. SLOMFP may make its showing of significant financial hardship in its Request for Compensation.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. SLOMFP plans to pursue discovery, prepare testimony, participate at hearings, and file briefs and comments, as required. SLOMFP plans to focus on issues surrounding the Diablo Canyon Independent Safety Committee.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. SLOMFP estimated a total projected budget of \$24,467.80⁶ for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

9. The Utility Reform Network

TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN indicates that it will coordinate its "participation with other intervenors to prevent unnecessary duplication of effort." (NOI, p. 2.) TURN qualifies as a customer because it is an organization that is authorized by its articles of incorporation to represent the interests of consumers, a portion of whom we have determined to be residential customers.⁷

⁶ This estimate includes expenses incurred in A.00-11-038, et al, related to the issues SLOMFP intends to pursue in this case.

⁷ TURN provided the relevant portions of its articles of incorporation in its notice of intent in Application (A.) 98-02-017. Although TURN's articles of incorporation do not specifically refer to residential customers, its articles of incorporation authorize it to represent consumers of public utilities services. TURN has approximately 30,000 dues paying members, the majority of which are residential ratepayers. TURN does not poll

Footnote continued on next page

TURN meets the third definition of customer, as set forth in § 1802(b), thus, the comparison standard applies.

The economic interests of TURN's individual members are small in comparison to the costs of effective participation in Commission proceedings. In addition, the cost of TURN's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents. TURN's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation.

A rebuttable presumption of eligibility exists because TURN received a finding of significant financial hardship in an ALJ Ruling issued on March 25, 2003 in Application (A.) 02-07-050. This proceeding commenced within one year of this finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.02-07-050 is applicable. A finding of significant financial hardship in no way ensures compensation (§ 1804(b)(2)).

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. TURN expects to conduct discovery, prepare testimony, cross-examine witnesses, and file briefs and comments, as required. TURN plans to focus on utility expenses and service quality standards but had not identified specific issues at the time the NOI was filed.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. TURN estimated a total

its members to determine whether they are residents or small businesses, so no percentage split is available.

projected budget of \$347,700 for this case, based on proposed hourly rates which will be addressed in its Request for Compensation.

Therefore, **IT IS RULED** that:

1. William Adams is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a) with the exception of the showing of significant financial hardship, and is found eligible for compensation in this proceeding.

2. Aglet Consumer Alliance (Aglet) is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and Aglet is found eligible for compensation in this proceeding.

3. Latino Issues Forum and Greenlining Institute (jointly, Greenlining) is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and Greenlining is found eligible for compensation in this proceeding.

4. Natural Resources Defense Council (NRDC) is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and NRDC is found eligible for compensation in this proceeding.

5. San Francisco Community Power Cooperative (SF Co-op) is a customer as that term is defined in § 1802(b), has met the eligibility requirements of § 1804(a), and has also established that its participation in this proceeding will pose a significant financial hardship. SF Co-op is eligible for compensation in this proceeding; however given the inclusion of three large business users within SF Co-op's overall membership, the Commission will determine, at the

compensation stage, what percentage of the co-op's total membership actually faces significant financial hardship due to its participation, and will reflect that determination in the calculation of any compensation award ultimately made.

6. San Luis Obispo Mothers for Peace is preliminarily found to be a customer as that term is defined in § 1802(b) and has met the eligibility criteria of § 1804(a), with the exception of the showing of significant financial hardship, and is preliminarily found eligible for compensation in this proceeding subject to providing additional documentation in its Request for Compensation.

7. The Utility Reform Network (TURN) is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and TURN is found eligible for compensation in this proceeding.

Dated April 9, 2003, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated April 9, 2003, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

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